

FOREIGN WORKERS

The Law And Practice In Malaysia

Ashgar Ali Ali Mohamed

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EMPLOYMENT STATUTES AND THEIR APPLICATION TOWARDS MIGRANT WORKERS*

6.1 INTRODUCTION

All forms of forced labour and slavery are prohibited by arts. 6(1) and (2) of the Federal Constitution. Article 6(1) provides that 'no person shall be held in slavery.' The term 'no person' explicitly used in the article reflects that neither local nor migrant workers shall be held in slavery or any form of servitude. Further, art. 6(2) provides that all forms of forced labour are prohibited. However, the Parliament may, by law, provide for compulsory service for national purposes. Apart from the above, art. 8(1) provides that 'all persons are equal before the law and entitled to the equal protection of the law.' Again, the words 'all persons' in the above article would necessarily include the migrant workers. Hence, physically abusing migrant workers such as causing hurt and wrongful confinement are totally abhorred and is thus, prohibited by the Federal Constitution, the supreme law of the Federation. Likewise, to compel an employee to work for a particular employer, without affording him a choice in the matter is also one form of forced labour.¹ It should therefore be recognised and accepted that all workers should be treated with fairness, dignity and equality without distinction whether they are local or migrant.

Having stated the above, the following are the employment statutes enforced in Malaysia. The nature and purpose of the statutes are discussed below with special reference to its application to migrant workers in Malaysia:

- (i) Employment Act 1955 (the law applicable in the States of Sabah and Sarawak are the Labour Ordinance Chapter 67 and Chapter 76, respectively);

* This Chapter is contributed by Ashgar Ali Ali Mohamed.

1 See *Barat Estates Sdn Bhd & Anor v. Paratikan Subramanian & Ors* [2000] 3 CLJ 625.